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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/037,597	01/04/2002	Neal W. Luginbill	HRA-12807	6360
27505	7590	03/16/2005	EXAMINER	
RANKIN, HILL, PORTER & CLARK LLP			CHIANG, JACK	
4080 ERIE STREET			ART UNIT	
WILLOUGHBY, OH 44094-7836			PAPER NUMBER	

2642

DATE MAILED: 03/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<p align="center"><b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b></p>	<b>Application No.</b> 10/037,597	<b>Applicant(s)</b> LUGINBILL ET AL..PN.	
	<b>Examiner</b> Jack Chiang	<b>Art Unit</b> 2642	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 07 March 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The reply was filed after the date of filing a Notice of Appeal, but prior to the date of filing an appeal brief. The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).


4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: \_\_\_\_\_.
- Claim(s) objected to: \_\_\_\_\_.
- Claim(s) rejected: \_\_\_\_\_.
- Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attach sheets.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_
13. ☐ Other: \_\_\_\_\_.

  
 Jack Chiang  
 Primary Examiner  
 Art Unit: 2642

**ADVISORY**

In response to the remarks filed on 03-07-05, in pages 6-7, applicant has briefly summarized both the subject matter of the present application and the cited references.

In page 7, applicant first argues that there is no motivation in the art of record to combine Wakefield and Peiker. Applicant further argues that only Fig. 5 in Wakefield ... with an outer 2 and inner member 60.... Applicant further argues that to provide the outer member of Wakefield with the open face disclosed by Peiker would severely limit its dual function capabilities ... creates instability when functioning as a beverage holder.

The examiner disagrees. First, only one fig. 5 in Wakefield (and with the teaching of Peiker) is sufficient to show the claimed holder. Second, the motivation had been laid out in the combination of Wakefield and Peiker in the Office action. In other words, there are reasons for Peiker to provide his holder with an open front face. Otherwise, all holders would have been made with non-open front face. Third, with on open-face holder, it is not seen that it would limit its beverage holding function or creates instability. There are many beverage holders that have an open face, including Osborn (US 6543637) as part of the record. It is not seen that when a beverage holder has an open face, it would create instability as argued by applicant.

In page 8, applicant further argues that Wakefield does not ... receive phones of different sizes.

Art Unit: 2642

The examiner disagrees. Wakefield's holder is made of flexible material, it further states that the opening of the holder is deformable (col. 2, lines 22-23 in Wakefield). It also states that the holder is used in an environment to allow positioning *a cellular telephone or other portable communicator* (col. 1, lines 13-14). It clearly can hold different sized phones.

In page 8, applicant argues that Peiker cannot be interpreted as teaching an opening in both inner and outer members, as it comprises only a single element.

The examiner disagrees. First, Peiker is not cited to show two members, these two members have been taught by Wakefield. Second, Peiker is cited to teach a front opening. It does not matter on the number of layers (members) that Wakefield has, in order to cut a front opening, it would require to cut through the members. How can you provide a front opening by just cutting one member with another member covering the cut? The motivation to combination Wakefield with Peiker is not about incorporating Peiker into Wakefield.

In pages 8-9, applicant argues that the combination of Wakefield, Peiker and Klammer is invalid for hindsight....

The examiner disagrees. The reasons for combining the references had been laid out the rejections. Further, most and almost all cell phones would have a cable at one time or another, such as for charging. Having an opening on the bottom would allow the phone to be connected with other devices. This is commonly done and shown by the cited references.

Art Unit: 2642

Further, Wakefield does have ears which fit in the opening of the holder (the interior of 2 and 10) (see rejection).


In pages 9-10, about the combination of Wakefield, Peiker, Klammer and Osborn, applicant argues that the references are solving different problems ... the present application provides the only motivation for the combination.

The examiner disagrees. In the combination, such as col. 2, lines 35-38 in Osborn, it states: "... the lower body portion may include at least one elongate slot ... induces flexibility into the lower body portion ....". It is clearly that there are motivations from the references for the combination.

In pages 10-11, about the combination of Wakefield and Troy, applicant argues that ... making such a modification ... teaches away ....

The examiner disagrees. First, there are many vehicles that the beverage holder and the storage bin are a part of each other. This is shown by Troy, and the reasons for combining is also laid out in col. 1, lines 30-32 in Troy.

In pages 12-14, applicant has repeated similar arguments, see comments and rejections above.

  
JACK CHIANG  
PRIMARY EXAMINER